No. 350

In the Supreme Court of the United States

OCTOBER TERM, 1958

WILLIAM G. BARR, PETITIONER

v.

LINDA A. MATTEO AND JOHN J. MADIGAN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE PETITIONER

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CITATIONS

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OPINIONS BELOW

The United States District Court for the District of Columbia wrote no opinion. The original opinion of the Court of Appeals for the District of Columbia Circuit, dated May 2, 1957, as modified by its order of June 6, 1957 (R. 43–51), is reported at 244 F. 2d 767. The *per curiam* opinion of this Court, dated December 9, 1957, vacating the judgment of the Court of Appeals and remanding the case to that court for further consideration, is reported at 355 U.S. 171. The opinion of the Court of Appeals upon remand (R. 53–54) is reported at 256 F. 2d 890.

JURISDICTION

The judgment of the Court of Appeals was entered on June 12, 1958 (R. 55–56). The petition for a writ of certiorari was filed on September 9, 1958, and was granted on December 15, 1958 (R. 56). The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTION PRESENTED

Whether the absolute immunity from defamation suits, accorded officials of the Government with respect to acts done within the scope of their official authority, extends to statements to the press by high policy-making officers, below cabinet or comparable rank, concerning matters committed by law to their control or supervision.

STATEMENT

This is a libel suit instituted by respondents, former employees of the Office of Rent Stabilization, against petitioner, who was the Acting Director of that Office, based on matters contained in an official press release issued by the latter on February 5, 1953. The press release related to a contemporaneous congressional inquiry concerning a terminal-leave plan which had been devised by the respondents in 1950 for employees of the agency. The factual background of the case may be summarized as follows:

1. *The terminal-leave plan.* In May 1950, reduction-in-force notices were issued to personnel of the Office of Housing Expediter, an independent executive agency and the predecessor of the Office of Rent Stabilization. This was occasioned by the fact that

he agency's statutory existence was about to expire. Respondent Madigan, who was Deputy Director in harge of personnel and fiscal matters, and respondnt Matteo, chief of the personnel branch, devised a lan which was designed to utilize $2,600,000 (which ad been earmarked in the agency's appropriation for he fiscal year 1950 exclusively for terminal-leave payments) as a means of conserving funds for future perational needs should the agency's life be extended R. 14, 17). The idea was to pay off accumulated erminal leave, thus obviating the possibility that the gency might have to meet a heavy terminal-leave urden the next fiscal year, out of the agency's general funds. The plan provided that employees of the gency would be discharged pursuant to the existing eduction-in-force notices, receive payment for accrued annual leave out of the earmarked terminaleave appropriations, be rehired the following day as emporary employees, and then be restored to permaent status if the life of the agency were thereafter xtended (*ibid.*).

Petitioner, who was then General Manager of the ffice of Housing Expediter, was opposed to the plan n the ground that it violated the spirit of the soalled Thomas Amendment to the General Appropriaon Act, 1951, 64 Stat. 768, which required governent employees to use their annual leave within a pecified time and prohibited payments for unused nnual leave accumulated during the calendar year 950 (R. 15). The Housing Expediter decided gainst general adoption of the plan. However, when rs. Matteo advised him that some of the employees

desired to take advantage of the proposal, he decided that it might be utilized on a volunteer basis (R. 17–18, 19). On June 23, 1950, Congress extended the authority of the Office of Housing Expediter to June 30, 1951, and two days later the terminal-leave plan was put into effect for forty-nine employees of the agency, including the respondents (R. 14, 18, 21).[1]

2. *The press release.* On January 28, 1953, Senator John J. Williams of Delaware wrote to the Office of Rent Stabilization (successor to the Office of Housing Expediter) inquiring as to the 1950 terminal-leave payments (R. 19–20). The letter came to the attention of respondent Madigan, who drafted a reply defending the plan (R. 20). The draft was not brought to the attention of petitioner, who was at that time the Acting Director of the agency (R. 15, 20). The letter was subsequently prepared in final form and sent to petitioner's office for signature. In petitioner's absence, his name was signed by the Director's secretary, and the letter was delivered to Senator Williams on the morning of February 3 (*ibid.*).

The following day (February 4), Senator Williams, on the floor of the Senate, delivered a speech criticizing the 1950 terminal-leave payments and requesting that the matter be investigated by a congressional committee (R. 3, 16). Senators Ferguson, Dirksen, and McCarthy joined in a denunciation of the leave

[1] Respondent Madigan has since sued in the Court of Claims to recover the amount of terminal-leave payments due him under the plan. The Court of Claims recently held that the plan was not in violation of law. *Madigan* v. *United States*, No. 262–53, June 4, 1958.

payments as a "conspiracy to defraud the Government" and a "raid on the Treasury." 99 Cong. Rec. 868–71. These comments received wide publicity (R. 3, 4) and petitioner was questioned about the plan by newspapers and other interested parties (R. 16).

On February 5, petitioner advised the respondents that because of the criticism of himself and the Office of Rent Stabilization, the adverse publicity, and the need to protect himself and safeguard the interests of the agency, he was going to take disciplinary action (R. 16, 20, 22). He thereupon served them with letters expressing his intention to suspend them on February 9, the date when his appointment as Acting Director was to become effective.[2] Contemporaneously, at petitioner's direction, the Office of Rent Stabilization issued the following press release, which is the subject matter of this litigation (R. 4–6):

> William G. Barr, Acting Director of Rent Stabilization, today served notice of suspension on the two officials of the agency who in June 1950 were responsible for the plan which allowed 53 of the agency's 2,681 employees to take their accumulated annual leave in cash.
>
> Mr. Barr's appointment as Acting Director becomes effective Monday, February 9, 1953, and the suspension of these employees will be his first act of duty. The employees are John

[2] Petitioner had been appointed Acting Director effective February 9, 1953, when the resignation of Director James Henderson was to become effective. When the press release was issued, petitioner was Acting Director by designation of Mr. Henderson, who was then absent from Washington (R. 24).

J. Madigan, Deputy Director for Administration, and Linda Matteo, Director of Personnel.

"In June 1950," Mr. Barr stated, "my position in the agency was not one of authority which would have permitted me to stop the action. Furthermore, I did not know about it until it was almost completed.

"When I did learn that certain employees were receiving cash annual leave settlements and being returned to agency employment on a temporary basis, I specifically notified the employees under my supervision that if they applied for such cash settlements I would demand their resignations and the record will show that my immediate employees complied with my request.

"While I was advised that the action was legal, I took the position that it violated the spirit of the Thomas Amendment and I violently opposed it. Monday, February 9th, when my appointment as Acting Director becomes effective, will be the first time my position in the agency has permitted me to take any action on this matter, and the suspension of these employees will be the first official act I shall take."

Mr. Barr also revealed that he has written to Senator Joseph McCarthy, Chairman of the Committee on Government Operations, and to Representative John Phillips, Chairman of the House Subcommittee on Independent Offices Appropriations, requesting an opportunity to be heard on the entire matter.

The proceedings below. Shortly after the issu- of the press release early in February 1953, this was brought, charging that the release was a cious libel causing damage to respondents (R. 1-

6). Petitioner's motion to dismiss the complaint on the ground of absolute privilege was overruled by the District Court on the authority of *Colpoys* v. *Gates*, 118 F. 2d 16 (C.A.D.C.) (R. 7). Petitioner then filed an answer (R. 7–9, 12), and a jury trial was held. After respondents had submitted evidence in support of their claim of liability, petitioner moved for a directed verdict on the grounds of (1) truth, (2) no defamatory imputation, and (3) qualified privilege. This motion was denied. The District Court also denied a motion for a directed verdict on the ground of absolute privilege. It refused to give instructions on the defense of truth and qualified privilege (R. 40) and instructed the jury to return a verdict for respondents if it found that petitioner's statements were defamatory (R. 40–41). A verdict was returned in favor of respondents in the amounts of $6,500 and $2,000, respectively.

On appeal to the Court of Appeals for the District of Columbia Circuit, the sole issue then raised by petitioner was whether the issuance of the press release was absolutely privileged (R. 45). At the request of the Court of Appeals, following argument, each party filed a memorandum on the question whether the court could nevertheless consider the issue of qualified privilege. Petitioner urged that the question could be considered by the court under its Rule 17 (i), which provides that "the court, at its option, may notice and pass upon a plain error not pointed out or relied upon." The court concluded, however, that since the waiver was "informed and deliberate," the rule in-

voked on petitioner's behalf was not applicable and the decision would be confined to the issue of absolute privilege (R. 45–46).

On the merits, the court (Judge Danaher dissenting) affirmed the judgment against petitioner. The majority opinion (by Chief Judge Edgerton, with Judge Fahy concurring) recognized that petitioner's decision to suspend respondents "probably [was] within his general line of duty," but held that petitioner "in explaining his decision to the general public * * * went entirely outside his line of duty" (R. 44). The majority stated that "if the defendant had been a Cabinet officer, his public explanation might have been absolutely privileged" (*ibid.*), but that in this respect the position of the Acting Director of the Office of Rent Stabilization was not different from that of the United States Marshal involved in *Colpoys* v. *Gates,* 118 F. 2d 16 (C.A.D.C.). The majority subsequently modified its opinion to declare that absolute privilege was not necessarily limited to cabinet officers but might also protect other officers who held comparable positions (R. 51).

Judge Danaher, in dissenting (R. 46–49), stressed the fact that petitioner, as Acting Director of the Office of Rent Stabilization, had been delegated all of the powers, duties, and functions conferred on the President by Title II of the Housing and Rent Act of 1947, 61 Stat. 193. In his view, the press release was no more than a declaration of policy by a policy-making executive with respect to a matter committed by law to his control or supervision.

Petitioner thereafter applied to this Court for a writ of certiorari, raising the question whether the press release was protected by an absolute privilege (No. 409, 1957 Term). The Court granted the petition, vacated the judgment of the Court of Appeals, and remanded the case to that court "with directions to pass upon petitioner's claim of a qualified privilege." 355 U.S. 171, 173. The Court ruled that the question of absolute privilege should not have been reached by the Court of Appeals without first considering the narrower defense of qualified privilege, which might have been adequate to a disposition of the case.

On remand, the Court of Appeals held that petitioner's statements were protected by a qualified privilege and that the privilege was not lost by an excessive publication or by a specific reference in the press release to the respondents (R. 54). However, it further held that there was sufficient evidence in the record to warrant submitting to the jury the question whether the privilege had been forfeited by reason of (1) malice or (2) lack of reasonable grounds for believing that the contents of the publication were true. Since the District Court's approach had made it unnecessary to submit these issues to the jury, the case was reversed and remanded for further proceedings (*ibid.*).

SUMMARY OF ARGUMENT

1. This case involves the same basic question as is presented in *Howard* v. *Lyons*, No. 57, this Term. For the reasons elaborated in the Government's brief in *Howard*, we submit that the court below errone-

ously failed to accord an absolute privilege to the press release issued by the petitioner here. In both cases, we urge this Court to hold that the petitioners are immune from defamation liability for statements made in the course of performing their official duties, provided only that those statements are germane to matters committed by law to their control or supervision.

2. In our view, the issuance of the press release in question was clearly an act within the scope of petitioner's authority and responsibility as the head of an important agency of the Government. Petitioner had the primary responsibility for that agency's policies and activities, and control over its internal management and several thousand employees. The press release related solely to an official matter which had received a great amount of prior publicity tending to impair public confidence in the agency and its high officials. Dissemination of information to the public concerning such a matter must certainly be deemed within the area of petitioner's responsibilities:—democratic government depends on the public's knowledge of governmental policies and the conduct of public officeholders. If this need is to be adequately met, those occupying high executive posts in Government must be free of the threat of personal liability typified by the libel suit in this case.

ARGUMENT

Petitioner Is Immune From Defamation Suits Predicated on Statements Which He Made in the Course of His Official Duties While Head of a Federal Agency

This case presents for decision the same basic issue as is involved in *Howard* v. *Lyons*, No. 57, pending

on reargument:—whether government officials below cabinet level are immune from defamation liability for statements which are made in the course of performing their official functions and which relate to matters committed by law to their control or supervision. In *Howard,* the Court of Appeals for the First Circuit held that an executive officer below cabinet rank did not have full immunity when he sent interested Congressmen copies of an official report addressed to his superior officers, despite the fact that he was performing his official duty in making the report available. In the present case, the Court of Appeals for the District of Columbia Circuit has held that the issuance of an official press release by the head of an independent executive agency was not absolutely privileged despite the fact that it was germane to an official subject matter and was made by an official who had general authority to issue press releases concerning the business of the agency. Both cases, therefore, require a high government officer to do precisely what the rule of absolute immunity is designed to avoid, *i.e.,* litigate in a trial before a jury (1) the propriety of action taken by the officer in the course of executing his duties and (2) the *bona fides* of his motivation.

In our brief in *Howard,* to which the Court is respectfully referred, we develop at length the considerations which support the view that executive officers must be fully protected from tort liability for statements made in the course of their official duties if the public interest in the proper performance of those duties is to receive adequate protection. We also point out that this principle underlies the consistent

pattern of decisions of the lower federal courts, which has developed over a long period of time on the basis of this Court's decision in *Spalding* v. *Vilas,* 161 U.S. 483. We shall briefly summarize those arguments here and then show their applicability to the facts of the present case.

1. In *Spalding* v. *Vilas, supra,* this Court held that the Postmaster General was immune from liability in defamation for public statements "having more or less connection with the general matters committed by law to his control or supervision." 161 U.S. at 498. The immunity was deemed absolute—so long as making the statements was "not unauthorized by law" (161 U.S. at 493) or beyond the scope of official duties, the existence of malice was immaterial. The decision also makes plain that in order to receive the protection of immunity, it is not necessary that the official be under a positive legal duty to act; it is sufficient that general legal authority for the act existed. 161 U.S. at 498–99. See also *Glass* v. *Ickes,* 117 F. 2d 273 (C.A.D.C.), certiorari denied, 311 U.S. 718; *Mellon* v. *Brewer,* 18 F. 2d 168 (C.A.D.C.), certeriorari denied, 275 U.S. 530.

So far as official communications are concerned, the doctrine of *Spalding* v. *Vilas* has not been limited to heads of executive departments but has been applied to government officials of lesser rank. Thus, in *De Arnaud* v. *Ainsworth,* 24 App. D.C. 167, appeal dismissed, 199 U.S. 616, the Court of Appeals for the District of Columbia Circuit held that the making of an official report by an officer in the War Department to the Secretary of War must be absolutely

privileged in order to avoid serious restraint on "the perfect freedom which ought to exist in discharge of public duty * * *." 24 App. D.C. at 178. And the court followed this decision in *Farr* v. *Valentine*, 38 App. D.C. 413, holding that a communication to the Secretary of the Interior by the Commissioner of Indian Affairs charging the plaintiff with professional incompetency was absolutely privileged. Numerous other decision of various federal courts have reached the same result.[3] The unanimity in treatment is striking.

Nor has the doctrine of absolute immunity been limited to defamation suits. In *Yaselli* v. *Goff*, 275 U.S. 503, this Court, in a memorandum opinion, affirmed a decision of the Court of Appeals for the Second Circuit (12 F. 2d 396) holding that a Special Assistant to the Attorney General "in the performance of the duties imposed upon him by law, is [absolutely] immune from a civil action for malicious prosecutions * * *." (12 F. 2d at 406.) The Court of Appeals ruled (*ibid.*) that "the public interest requires that persons occupying such important positions and so closely identified with judicial departments of the government should speak and act freely and fearlessly in the discharge of their important official functions."

This case was followed by the Second Circuit in *Gregoire* v. *Biddle*, 177 F. 2d 579, certiorari denied, 339 U.S. 949, in a noted opinion by Judge Learned Hand. The court there held that officers of the Department of Justice (including both the Attorney Gen-

[3] See the cases cited in our brief in No. 57, p. 20, fn. 8.

eral and lesser officials), irrespective of motives, could not be held personally liable for the wrongful internment of the plaintiff under the Alien Enemy Act of 1798. And in the similar case of *Cooper* v. *O'Connor*, 99 F. 2d 135, certiorari denied, 305 U.S. 643, the Court of Appeals for the District of Columbia Circuit held officials of the Treasury and Justice Departments absolutely immune from liability for malicious prosecution. Further case authority in areas outside of defamation is considerable and uniform in support of the principle of absolute privilege.[4]

If the purpose of the rule of immunity is to be effectuated, the immunity must be absolute, and not merely qualified or conditional, so as to avoid the necessity of litigating such difficult questions of fact as proper motivation and reasonableness of conduct. The policy underlying the rule is not that a federal officer, by virtue of his position, should have a privilege to defame or to act maliciously, but that a greater public interest requires that the officer, in the discharge of his duties, be uninhibited by the fear of an onerous lawsuit or of substantial personal liability. To attain these ends, an absolute immunity is necessary. A qualified privilege is forfeited by the use of "excessive" language, by an "excessive" publication, by an "improper" motive, or by the absence of a reasonable belief in the truth of the statements made. These are matters for a jury determination and obviously cannot be easily measured. The purpose of the rule of absolute immunity, then, is to forestall litigation at the outset—to avoid the oppressive burdens

[4] See the cases cited in our brief in No. 57, p. 23, fn. 9.

which might be brought to bear upon vigorous public officials if their every controversial act and statement, made in the course of duty, bearing on the conduct of other persons, were to become a potential source of protracted and costly litigation against them personally.

It is also important that the nature of the duty being performed, and not the level of the officer's position, should determine the extent of the privilege. Given the present complexity of governmental operations, the head of an executive department cannot personally perform all of the functions of the department; he must act through subordinates. Obviously, many high-ranking, albeit subordinate, officials are performing policy-making functions which involve judgment and discretion. In exercising that judgment, it is often required that statements be made to other officers in the department, to executive officials outside the department, to members of other branches of the Government, and, on occasion, to the press and the general public. The policy underlying the rule of absolute immunity is that these duties should be performed freely and vigorously; the rule's rationale is the public interest in the function being performed, not a desire to bestow the splendors of unnecessary privilege upon men of rank.

2. In the *Howard* case, the First Circuit held that the officer's communication was not absolutely privileged despite the fact that it was made "in the course of the performance of his executive functions * * *." 250 F. 2d 912, 915. Moreover, uncontradicted affidavits established that Admiral Howard's communi-

cation not only was an act within the general scope of his authority but constituted the performance of a specific duty. In the present case, the Court of Appeals held that in issuing the press release petitioner had gone "entirely outside his line of duty" (R. 44). Perhaps, in literal terms, therefore, the court here, unlike the court in *Howard,* adhered to the general principle that authorized acts are absolutely privileged. But it did so only by adopting an artificially restrictive test of "line of duty," one which fails to take into account the nature of the officer's functions and the circumstances necessitating and justifying his action—a test which is nothing more than one way of stating the court's conclusion that an absolute privilege ought not to be accorded. Because of this, we believe that the case at bar and the *Howard* case are not to be distinguished in any decisive respect; both decisions seriously jeopardize the public interest in proper and vigorous performance of executive duties.

In *Spalding* v. *Vilas, supra,* this Court held that in order to receive the protection of immunity, it was not necessary that the official be under a positive legal duty to act, but it was sufficient that general legal authority for the act existed. Similarly, the Court of Appeals for the District of Columbia Circuit, in *Mellon* v. *Brewer,* 18 F. 2d 168, certiorari denied, 275 U.S. 530, held that the release to newspapers of an official letter from the Secretary of the Treasury to the President was absolutely privileged although the President had not requested the report, for "it certainly was not beyond the scope of the Secretary's

duty and authority to submit one." 18 F. 2d at 171. And in *Cooper* v. *O'Connor*, 99 F. 2d 135 (C.A.D.C.), certiorari denied, 305 U.S. 643, the court ruled that in order for an act to be within the scope of official duties it was not necessary that it be prescribed by statute or specifically directed or requested by a superior officer.

Judged by these standards, it seems indisputable that petitioner was acting within the scope of the authority of his office in giving full publicity to his agency's position on the terminal-leave plan and to the disciplinary action which he proposed to take. Petitioner, as Director of the Office of Rent Stabilization, was the head of a constituent agency of the Economic Stabilization Administration and was acting pursuant to a very broad delegation of presidential authority. His agency supervised and enforced federal rent control, and responsibility for proper performance of this important governmental function rested squarely with him. All powers, duties, and functions conferred on the President by Title II of the Housing and Rent Act of 1947 (61 Stat. 193) were redelegated to the Director of the Office of Rent Stabilization by the Economic Stabilization Administrator, and "[t]he aforementioned delegation of authority [reflected] the Administrator's policy to delegate to constituent agencies operating authority to the fullest practicable extent consistent with his ultimate responsibility for the conduct of the Agency's activities in a reasonable and efficient manner." 16 Fed. Reg. 7630. Petitioner thus had full responsibility for the internal management of the

agency, with its several thousand employees, and, like all heads of executive departments and agencies, was answerable to the President and Congress for the administration of the agency's policies.

The issuance of press releases was a regular practice of the Office of Rent Stabilization.[5] The circumstances which prompted the issuance of the press release, as outlined *supra* (pp. 2–5), make it clear that it was an official act. Indeed, public explanation of his actions should be considered as much a part of petitioner's duties as the taking of the action itself. Given the circumstances, the prior publicity, and the congressional reaction, petitioner was fully justified in considering it to be an obligation of his office to explain the controversy and to keep the public fully informed of continuing developments. Specifically, as a result of the proceedings in Congress and the publicity adverse both to the Office of Rent Stabilization and to its high officials, petitioner properly concluded that the public was entitled to know where he, as acting head of the agency, stood on the matter and what corrective action he was planning to take.

The situation facing petitioner in the present case was similar to that facing the Secretary of the Treasury in *Mellon* v. *Brewer, supra,* where a press release issued by the Secretary, in order to offset

[5] See, *e.g.*, N.Y. Times, Jan. 8, 1949, p. 7, col. 1; Apr. 1, 1949, p. 43, col. 7; Apr. 11, 1949, p. 26, col. 4; Aug. 18, 1949, p. 2, col. 8; Aug. 19, 1949, p. 1, col. 4; Jan. 17, 1950, p. 50, col. 3; Dec. 30, 1950, p. 16, col. 4; Mar. 14, 1951, p. 27, col. 2; Mar. 21, 1951, p. 36, col. 2; Jul. 21, 1952, p. 26, col. 1; Aug. 28, 1952, p. 26, col. 8; Sept. 30, 1952, p. 43, col. 1; Jan. 27, 1953, p. 28, col. 2; Mar. 16, 1953, p. 15, col. 3.

adverse publicity to his department and the impairment of public confidence, was held to be absolutely privileged. The only distinction between that case and the present one is that the former involved a cabinet officer and the case at bar involves an agency head who is not of cabinet rank. But whether or not the author of the alleged defamation is a cabinet officer should not be controlling; the rationale of the rule of absolute immunity applies equally to lesser officials, such as petitioner, who hold policy-making or "political" positions.[6] They, too, should be free—more than that, encouraged—to explain their acts and policies to the public and press without fear that they will be embroiled in litigation. The interest of the public in having access to the facts is at stake, for press releases and press conferences by subordinate government officials exercising policy-making functions have become an important and accepted means of communication. The decision below, if allowed to stand, will necessarily tend to curtail the dissemination of controversial information which the public is entitled to receive.

In recent years, Congress has given repeated emphasis to the public's "right to know." Legislative bills have included "a positive affirmation of Congress' intent that the people be enabled to know what is going on in their Government * * *." H. Rep. No. 1770, 85th Cong., 2d Sess. 23. The importance of a free flow of information to the public was recently expressed by a congressional committee in these terms (H. Rep. No. 1758, 85th Cong., 2d Sess. 17):

[6] See the brief for the petitioner in No. 57, pp. 31–33.

> "That the people must know" is a premise which is cemented into the foundations of any working democracy. James Monroe put the principle very well in his seventh annual message on the state of the Union:
>
> "To the people, every department of the Government and every individual in each are responsible, and the more full their information the better they can judge the wisdom of the policy pursued and the conduct of each in regard to it."

These statements do not unduly emphasize the importance of a public official's informing function and the vital public interest which the defense of absolute privilege serves to protect and which the denial of such a defense would seriously impair.

In summary, petitioner was a high policy-making official of the Government and the head of an important government agency. One of the clear responsibilities of his office was the dissemination of information to the public concerning that agency's policies and activities. The press release in question related entirely to an official subject matter—one which had received wide newspaper publicity and had occasioned considerable discussion on the floor of the Senate. The press release, whatever its impact on respondents, was nothing more than a statement of policy and proposed action with respect to a vital concern of the agency and its officials. Adequate protection of the public's interest in being apprised of the affairs of Government requires that officials shall not be required to run the gauntlet of constant and exhausting

personal litigation in order to follow a policy of disclosure.

CONCLUSION

For the reasons stated in this brief and in the petitioner's brief in No. 57, it is respectfully submitted that the judgment below should be reversed.

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